IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 491 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BAVA KARSHAN PATEL

Appearance:

1. First Appeal No. 491 of 1981

MR KL PANDYA, AGP for appellant

MR ND NANAVATI for NANAVATY ADVOCATES for respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/11/2001

ORAL JUDGEMENT

This appeal by the appellant-original defendant has been filed against the judgment and decree dated

31-3-1980 passed in Regular Civil Appeal No.8 of 1972 by the learned Joint Civil Judge (S.D.), Rajkot whereby the learned Judge, while decreeing the suit of the plaintiff, has declared that the suit land admeasuring at 2 Acres and 13 Gunthas of Survey No.345 is of the ownership of the plaintiff.

2. The brief facts leading to prefer the present First Appeal are as under:

2.1 According to plaintiff, he was in occupation of land admeasuring 2 Acres and 13 Gunthas situated near Old Railway Line of Survey No.345 of Rajkot. An application dated 23-7-1963 made to the Collector under Sec.65 of the Bombay Land Revenue Code (`the Code' for short) for converting the said land for non-agricultural purpose was rejected by the Collector vide order dated 12-9-1963 stating the plaintiff to be not in possession of the land and, hence an appeal was preferred before the Commissioner under Sec.203 of the Code. The Commissioner quashed the order passed by the Collector and ordered an inquiry under Sec.37(2) of the Code and matter went to Taluka Mamlatdar for inquiry and from there to Deputy Collector. On conclusion of the proceedings, since it was held by the Deputy Collector that the plaintiff neither possessed nor owned the suit land as he could not obtain occupancy rights in respect of waste land, he preferred an appeal before the Collector. As said appeal was rejected, he preferred revision application under Sec.211 of the Code before the Gujarat Revenue Tribunal. Since said revision was also rejected vide order dated 11-4-1969, a review application was also preferred. Pursuant to rejection of review application, a notice dated 1-4-1970 under Sec.80 of the Civil Procedure Code was served on the defendants. Since nothing happened, a suit being Special Civil Suit No.8 of 1972 was filed by the plaintiff before the Civil Court (S.D.), Rajkot for a declaration that he be declared as the owner of the suit land and hence, entitled to convert the same into non-agricultural use and for a permanent injunction restraining the defendant from enforcing its order.

2.2 The defendants resisted the suit of the plaintiff by filing written statement at Ex.49 in Special Civil Suit No.8 of 1972 mainly contending that the land was given to the plaintiff or his predecessor by the erstwhile State of Rajkot and land admeasuring 8 acres and 21 Gunthas of Survey No.345 came to the plaintiff pursuant to merger, but actually it was measured to be 7 acres and 31 Gunthas. That the whole of Survey No.345 was admeasuring 14 Acres and 34 Gunthas out of that, land

admeasuring 4 Acres and 32 Gunthas was taken away for Railway purpose and piece of land admeasuring 2 Acres and 14 Gunthas was sold away and, therefore, the remaining land was admeasuring 7 Acres and 26 Gunthas only. It was further contended that since the entire land was sold away by the plaintiff to four different parties admeasuring different areas, no land remained with the plaintiff. Moreover, the plaintiff was not given any waste land by the then State of Rajkot. Hence, it was prayed that plaintiff's suit be dismissed with costs.

2.3 Necessary issues for determination were framed by the learned Judge at Ex.26 and issue No.3 was heard and decided as preliminary issue. Considering the submissions made on behalf of parties, suit of the plaintiff was dismissed. When the plaintiff approached the High Court, matter was remanded back to Trial Court for deciding the same on merits. On conclusion of trial, the learned Judge (S.D.) vide judgment and order dated 31-3-1980 decreed the suit of the plaintiff and declared the plaintiff to be the owner of suit land of Survey No.345 admeasuring 2 Acres and 13 Gunthas. The learned Judge also declared that the plaintiff was entitled to get the suit land converted into non-agricultural purpose on satisfying the provisions of law. Against said judgment and decree, present First Appeal has been preferred by the State.

3. I have heard Mr.K.L.Pandya, learned A.G.P. for the appellant-State and Mr.N.D. Nanavati, learned counsel for Nanavaty Advocates for the respondent at length.

4. The first contention raised by learned A.G.P., Mr.Pandya is that Survey No.345 is admeasuring 14 Acres and 32 Gunthas and as per the documentary evidence, same has been purchased by plaintiff's father Karshan Khima in pubic auction and hence, said land was mutated in the name of Karshan Kima. He has further contended that as per the evidence on record, the plaintiff has sold or dispose of the whole land of Survey No.345 and now, he is not holding any land in Survey No.345 and, therefore, the authority has rightly rejected his application Ex.88 dated 23-7-1963 for converting the land into non-agricultural purpose. He has argued that the description of land which has been shown in application Ex.88 is admittedly an uncultivated land wherein he has prayed for converting 2 Acres and 13 Gunthas for non-agricultural purpose. The description of the land as mentioned in his application is as under:

1 Acre and 16 Gunthas - waste land to the south of Vonkla

0 Acre and 37 Gunthas - land of Vonkla

He has further argued that above fact has been established from the record which has been produced and proved by both the parties including the evidence of the plaintiff himself that the land for which application has made for converting into non-agricultural purpose in Survey No.345 i.e. 2 Acres and 13 Gunthas is admittedly an uncultivated land and waste land which is not shown in the name of plaintiff on record and this being a waste land more particularly Vonkla land and Vonkla bank land, it is vested with the Government and admittedly this is a Government land and hence, Court has wrongly held that the above land admeasuring 2 Acres and 13 Gunthas are of the ownership of the plaintiff. He has drawn my attention towards various documentary evidence as well as oral evidence which will be discussed at later stage.

5. Whereas learned counsel for the respondent-original plaintiff, Mr.N.D.Nanavati has argued that the application Ex.88 dated 23-7-1963 submitted by the plaintiff for converting the land admeasuring 2 Acres and 13 Gunthas into non-agricultural purpose is a part and parcel of Survey No.345. According to him, if it is calculated by arithmetic or examined by documentary evidence, it can be seen that plaintiff is the owner of this 2 Acres and 13 Gunthas of agricultural land of Survey No.345 and revenue authority has not considered that aspect of the case and rightly this land was not shown in the names of cultivators as no assessment was required to be made for revenue on such land, but they were shown in survey register against the names of cultivators. Relying upon the same, he has argued that the land in question has been shown in survey register against the name of cultivators i.e. plaintiff and is a land belonging to the ownership of plaintiff for which he has taken me through various documentary as well as oral evidence including Exs.80 to 88 and 104 etc. and argued that Court has considered all aspects of the matter in detail and rightly come to the conclusion that the plaintiff is the owner of land bearing Survey No.345 and Court should not interfere with the said finding as it is based on well foundation.

6. Before proceeding further, following undisputed facts emerged from the record and proceedings may be stated. Ex.80 is a lekh of suit land standing in the name of father of the plaintiff admittedly which has been purchased by the father of the plaintiff, Karshan Khima

in public auction and the suit land was mutated in the name of Karshan Khima which is seen from the ledger account Ex.81. By Ex.83 dated 17-7-1969, the Collector has granted permission to one Ravishankar Danji to use part of land bearing Survey No.345, admittedly which he has purchased from the plaintiff for non-agricultural (industrial) purpose, with certain conditions. Vide para 2 of that order, it was ordered that since waters used to pass through this land, Ravishanker was directed to make proper arrangement for the passage of these waters. Ex.84 is for deduction of 2 Acres and 33 Gunthas of land from survey No.345 as it was given to Swami Narayan Gurukul. Exs.86 and 87 are the sketches of part of land of Survey No.345. Ex.88 is an important document i.e. an application submitted by the plaintiff on 23-7-1963 for converting the suit land for non-agricultural use. This is the application which has given ultimately rise to an inquiry under Sec.37(2) of the Code as also the present litigation. The real dispute starts from Ex.88 onwards. Similarly, reply Ex.91 is the reply given by the plaintiff to the notice issued to him by Mamlatdar under Sec.37(2) of the Code wherein the plaintiff has shown account of his agricultural land on Survey No.345 i.e. 14 Acres and 31 Gunthas of land as under:

Acres	Gunthas	
1.	5	24 to Bhaktinagar Society
2.	0	11 to Railway
3.	2	33 to Swamy Narayan Gurukul
4.	1	30 to Railway
5.	0	36 to Mangaldas Patwari
6.	1	12 Land on the bank of Vonkla
7.	1	26 Vonkla land
8.	0	10 land on bank of Vonkla

Learned A.G.P., Mr.Pandya has given much more weight on the above account which will be dealt with later on.

7. As per Ex.91, after disposal of the land as above, plaintiff will remain with 2 Acres and 31 Gunthas of land in Survey No.345 as an owner. Ex.103 shows the measurement dated 24-3-1963 of Survey No.345. As per two foot notes which has been made by the Surveyor at the bottom of the sketch namely, (1) area of land of Survey No.345 covered by blue lines in part `B' shows the land of 1 Acre and 16 Gunthas as per the previous measurement dated 16-2-1960 and (2) area covered by red lines is zero Acre and 37 Gunthas of land and which was shown to be of the ownership of plaintiff by himself and that it was a

part of Vonkla land and was a passage for flow of rain water which was completely washed away. Ex.103 is the Tippan and Ex.104 is the xerox copy of the abstract of register of Survey No.345 wherein total area of Survey No.345 has been shown to be 14 Acres and 31 Gunthas wherein in column No.5 of uncultivated land, it has been specifically mentioned as 1 Acre and 36 Gunthas of land and in column of cultivated land, it was shown to be 12 Acres and 35 Gunthas. So, admittedly, as per Ex.104, Kharaba (waste land) attached with Survey No.345 has been shown in the name of agriculturists and as per the account of Ex.104, area of Survey No.345 was admeasuring 14 Acres and 31 Gunthas out of which, 12 Acres and 35 Gunthas are cultivated land whereas 1 Acre and 36 Gunthas are uncultivated land.

8. It is established from the record and proceedings and from the foot notes given at the bottom of sketch that land, which was acquired for Railway purpose i.e. 4 Acres and 32 Gunthas from Survey No.345, has been acquired admittedly prior to predecessor of the plaintiff purchasing the property by public auction and, therefore, that account has nothing to do with the present litigation.

9. In short, whole litigation starts from the date on which the plaintiff has submitted application Ex.88 i.e. on 23-7-1963 requesting the authority for non-agricultural use of 2 Acres and 13 Gunthas of land on Survey No.345 and at the cost of repetition I may say that this has given rise to an inquiry under sec.37(2) of the Code as also the present litigation.

10. It is true that total area of Survey No.345 was admeasuring 14 Acres and 32 Gunthas out of which, as per Ex.104, 12 Acres and 35 Gunthas were cultivated land. It is also true that 14 Acres and 32 Gunthas have gone to the predecessor of the plaintiff prior to his purchasing the property and, therefore, it is abundantly clear that on the date on which he has purchased the property through auction, he was having only 8 Acres and 21 Gunthas of agricultural land which can be used only for cultivation purpose together with other 2 Acres and 13 Gunthas of land shown in the column of uncultivated land and as per inquiry held under Sec.37(2) of the Code, the authority has come to the conclusion that this being a waste land and more particularly Vonkla and Vonkla bank land, it is belonging to the State. But clear answer of the above is Ex.104 wherein it has been shown as the land belonging to plaintiff and more particularly shown as uncultivated land and hence, no revenue was assessed.

Thus, it is clear that whole suit is practically based on documentary evidence. Still, however, both the parties have led oral evidence of various witnesses and tried to say something against documentary evidence most of which have come from the custody of Government and since no doubt has been raised or created by the defendant-State as regards its genuineness or it has not been stated that it does not tally with the record, whatever documents that have been produced and proved by the parties, as they are from the Government record, are required to be accepted as true and hence, it can be held that the land for which non-agricultural permission has been sought for by the plaintiff on 23-7-1963 admittedly is not cultivated land, but an uncultivated land which was part of the agricultural land of Survey No.345 and, therefore, account of 8 Acres and 21 Gunthas and total account of 14 Acres and 32 Gunthas are not the questions which are required to be dealt with or discussed here at this stage. However, it is to be noted that land for which non-agricultural permission attached with Survey No.345 sought for is a waste land and is of the ownership of the State of Gujarat-original defendant for which, as discussed earlier, the main important document is Ex.104 along with other documentary evidence which leads the Court below to the conclusion that the land in question for which non-agricultural permission has been sought for is of the ownership of the plaintiff. But learned counsel for the State, Mr.Pandya has drawn my attention that in any circumstances of the matter, the finding given by the Court below is not correct because it has been specifically mentioned in the application itself that 1 Acre and 16 Gunthas are the waste land to the south of the Vonkla which is a bank land whereas zero Acre and 37 Gunthas are admittedly a Vonkla land and that Vonkla land ultimately is a rain water passage and, therefore, both lands are the waste lands and when they have not been assessed for revenue purpose, automatically they will be vested with the Government.

11. Mr.N.D.Nanavati, drawing my attention towards various documents, has argued that Vonkla land and Vonkla bank land are in Survey No.345 and are in possession of the plaintiff from very beginning and as per the revenue record, they have been shown as part and parcel of Survey No.345 and hence, specifically it has been mentioned as uncultivated land for revenue assessment, but the ownership has been vested with the plaintiff. He has argued that after Special Civil Suit No.8 of 1972 filed by the plaintiff has been dismissed by the Court below on preliminary issue, entry No.6948 has been made in the revenue record for the first time which was during the

pendency of appeal before the High Court against the said decision i.e. entry was made when the matter was sub-judice.

12. It appears that when the First Appeal has been allowed by this Court and Special Civil Suit was restored to file, then also, entry remained in revenue record. Even if that entry is ignored then also, till date, the property in question i.e. the suit property remained in the name of the plaintiff alone.

13. The plaintiff has examined himself at Ex.79 wherein also he has relied upon Vonkla land and land abutting to Vonkla land for proving his title over the suit land by deposing that he was cultivating the land abutting to Vonkla land. He has categorically deposed that he has sold part of his land i.e. 8 Gunthas which was waste land (Vonkla land) to Ravishankar and the Collector, in turn, has allowed Ravishankar's application for using this land for non-agricultural purpose which reflects from Ex.83. Mamlatdar has given his report after holding inquiry under Sec.37(2) of the Code that said land admeasuring 20 Gunthas is belonging to Ravishankar. Said fact has not been challenged by the otherside and it is established from the order passed by the Collector Ex.83 that he has imposed a condition to make proper arrangement for passage of water of land allotted to Ravishankar which prima-facie proves that there was a passage for natural and normal flow of water and that flow was ordered to be maintained in its original position. Relying upon the same, Court below has held that the Government has given permission for part of Vonkla land which was sold to Ravishankar for non-agricultural purpose and hence, when admittedly the plaintiff is having the ownership of land in Survey No.345, then State cannot take a different view in the case of plaintiff on the ground of equality.

14. One thing established from the record and proceedings and from the inquiry which has been held in the case of Ravishanar under Sec.37(2) of the Code by the Collector is that the Collector has held the land, which has been sold to Ravishankar admeasuring 8 Gunthas of land, as admittedly of Vonkla land. Another thing established from the record is that total Vonkla land which passes through Survey No.345 is admeasuring 37 Gunthas and it is the case of both the parties from very beginning and hence, it is not necessary to repeat it again at this stage. Facts remain that land, which is of the ownership of the plaintiff and is part of Survey No.345, is Vonkla land and Vonkla bank land and more

particularly 37 Gunthas are Vonkla land and 1 Acre and 16 Gunthas are of Vonkla bank land. When waste land attached to agricultural land, which is of the ownership of concerned person, has been accepted by the authority itself, the contention of the appellant State that during the time of erstwhile State of Rajkot, no waste land was being given for cultivation and erstwhile cultivators were not the holders of such uncultivated waste land and therefore they are not obtaining any occupancy rights in respect of old land on coming into force of the said State cannot be accepted. However, if the example of Ravishankar is taken, it is seen that the appellant State has given permission after holding inquiry under Sec.37(2) of the Code that the land admeasuring 8 Gunthas of Vonkla land sold to Ravishankar by the plaintiff can be used for non-agricultural purpose and, therefore, now it does not lie in the mouth of the State that it does not go with the agricultural land and more particularly as established from the record and proceedings that 1 Acre and 16 Gunthas of land which are said to be Vonkla bank land are partly cultivated land and, therefore, no revenue was assessed on that land so as to encourage the agriculturists to convert the said Kharaba into agricultural land. Facts remain that Vonkla land i.e. 37 Gunthas of land is for flow of rain water and it cannot be of the ownership of plaintiff and hence, automatically it has been vested with the Government and it has been established from the record and proceedings that merely through mistake or any other way, part of Vonkla land has been converted into non-agricultural purpose in the case of Ravishankar, said mistake cannot be permitted to be committed again here in the case of plaintiff. It is a land which is a waste land and it is meant for natural and normal flow of rain water and if it will be converted, then there will be no way for full flow of rain water and it cannot be said to be of the ownership of plaintiff especially when it is part of Survey No.345.

15. In view of what has been stated hereinabove, I am of the opinion that decree passed by the Court below to some extent is required to be confirmed and some extent is required to be modified and, therefore, I hold that 1 Acre and 16 Gunthas of Vonkla bank land are held to be part and parcel of Survey No.345 and is of the ownership of the plaintiff and decree to that effect is required to be confirmed in favour of the plaintiff and against the defendant. As far as 37 Gunthas of land are concerned, admittedly they are Vonkla land for rain water stream hence, same are kept as it is where it is and it is vested with the Government. Since the plaintiff has sold

20 Gunthas of land to Ravishankar from Survey No.345 out of which, admittedly, 8 Gunthas are Vonkla land and Vonkla of Survey No.345 are 37 Gunthas and, therefore, 8 Gunthas of Vonkla land has been sold to Ravishankar by the plaintiff without any title and, therefore, plaintiff should give account to that effect to the State Government. Now plaintiff is entitled to be declared as the owner of 1 Acre and 16 Gunthas of land minus 8 Gunthas.

16. Hence, appeal is partly allowed and it is hereby declared that the plaintiff is the owner of 1 Acre and 8 Gunthas of Vonkla bank land and Vonkla land automatically vested in the Government. Decree is modified to aforesaid extent. Decree be drawn accordingly. No order as to costs.

(R.P.DHOLAKIA,J.)
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